Mr. Thanu Pillai.—I beg to move that the Bill as amended be passed and that it come into force on the 1st Chingom 1077.

Seconded by Mr. Kochukrishna Marar.

The motion was put and agreed to.

TOBACCO REGULATION AMENDMENT BILL.

Mr. Thanu Pillai.—In regard to this Bill, I have only a formal proposition to make. It has been already considered by the Council and awaits final passing. I beg, therefore, to propose that it be passed. It will take effect, under the General Clauses Regulation, from the date of publication in the Gazette.

Seconded by Mr. Sivasubramonia Pillai.

The motion was put and agreed to.

HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS BILL.

Mr. Nagam Aiya.—The third stage, Sir, of my Bill having been now reached, I will, with your permission, make a few observations before asking the Council to affirm its principle. It will not be denied that the public have had the fullest notice of the Bill and have had the amplest opportunities of understanding its scope and provisions. Local opinion has been sought on the measure to the fullest extent possible, and those who have not favored us with their views until now, are not likely to do so under any circumstances; and with your permission, Sir, the opinions of eminent authorities outside Travancore were also sought and secured, and I take this opportunity of thanking those gentlemen who, although outside the sphere of our influence and totally unconnected with our labors, have yet sacrificed time and trouble in our behalf and in what they consider the cause of sound and beneficial legislation in Travancore. The opinions so collected are extremely encouraging, and, so far as the principle of the Bill is concerned, may be said to be practically unanimous. These opinions will be briefly referred to.

I will first deal with the vernacular opinions or those submitted in Malayalam, the English language being entirely unknown to the signatories There are 39 such papers in all (opinions and petitions included) received on the Bill after it was introduced into the Council 7 months ago. Of these 39 papers, 31 are in favor and the remaining 8 may be said to oppose it. The letter of the Edappalli Chief which is included in the above 39, merely prays that the temples in his Yedavagai or estate may not be brought under the Bill. Two petitions, included in the above said 39 papers, pray for more time being given for consideration of the Bill. Of the 8 dissentients, 4 are petitions from Malayala Brahmin jenmis, 1 is from the Ambalavasis of Thazhakkara in Mavelikara, 2 are opinions of individual jenmis and 1 is from a Nair Vakil of the High Court who at first seemed to be very much taken up with the intended legislation, but who has, under wiser counsels perhaps, since recanted. Excluding this *Judas Iscariot* from our consideration, there are 7 papers which I have carefully scrutinised. The Council will not expect these innocent Namboories to draw a fine line of distinction between the principle of a Bill and its provisions. That is a distinction known only to the learned few.

One of these 7 papers said to proceed from a Nambooripad says, that as Government already possesses the power to assume any Hindu Religious or Charitable Endowment, no special law is needed; that if Government takes power under the law to assume any Hindu endowment, they should similarly take power to assume other non-Hindu endowments as well; that the *acharoms* of the people as a whole require modification and improvement in several particulars; and that the condition of some mis-managed endowments will not justify Government to take power to assume any endowment.

Another paper proceeding from a Potti of Vembayom urges that many temples assumed by Government since 980 M. E. are not themselves well-managed; that the Bill contemplates only the protection of temples now being well-managed; that the present non-Sircar temples, having been declared independent of Government when the other temples were taken, should be allowed to continue as such;

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that it is unfair to prohibit suits against Government which might arise under the operation of the law; and that his reason for making this representation is due to his wish that his own temple, Kanniakulangara Devaswom, should not be brought under the law.

A third paper urges that excepting those temples and their endowments which are common to all, the others should be excluded from the operation of the Bill, where the owners are known specifically by name; that as exception is provided in the case of 'private temples' under section 2, the same privilege should be extended to temples whose founders are more than one; that section 5 should not apply to such temples; that Government should not assume a temple at the request of a former owner; that section 10 of the Bill prevents suits against Government which should be permitted; that non-Hindu endowments should also be brought under the law; and that the law should affect only those who have agreed to it.

A fourth paper urges that the Bill is injurious to their customs and *acharoms*; that the Sircar institutions are not better managed than their own; that to bring the temples in their hands under the management of the State as contemplated by the Bill is a matter of grievance and loss to them; and that the Government should properly take similar cognizance of non-Hindu endowments also.

A fifth paper urges that Devaswoms under their own management are flourishing, while the Sircar ones require to be improved; that section 3 is incorrect in including temple properties as "charities"; and that section 10 which prohibits suits against Government is unjustifiable.

A sixth paper states that excepting the most important and the most affluential Sircar temples which come under the notice of the chief officials, the others are ill-managed, while the Ooralma temples are better managed and sometimes with the private funds of the Ooranmakars themselves; that as Government already possesses power to enquire into cases of mismanagement or misappropriation by these Ooralers, no special law is needed at present for the purpose; that it is necessary to protect charities by law so that charities may be regulated and charity donors may be encouraged to create trusts for purposes of charity; and that legislation should not be confined to Hindu religious and charitable endowments alone, but should be impartially extended to non-Hindu endowments as well.

The seventh paper, which proceeds from 4 Ambalavasis of Thazhakkara, states that since some temples under the original management had been tendered by them and assumed under Sircar management, their families have not prospered on account of the sin of insufficient management by the State; that the present Ooralma temples, if parted with, will not thereafter be cared for by the present Ooralers who, in some cases, even pay out of their own private funds, and that if the same attention and earnestness is not bestowed, they (the Ooralers) and their families will incur the wrath of the gods in the temples and injure themselves and their posterity; that a full inquiry into the wealth and revenues of all temples in the State should be held and action taken; and that with the temple endowments' revenues, not only are the expenses of the temple met but also those of their own families, that these temples will come under the proviso to section 2 and that evidence to that effect will be submitted.

The foregoing *precis* gives a fair and unbiassed statement of the opposition-opinions to the Bill, and the Council will be able to judge from them how far, if any, they affect the principle of the Bill itself. So far as I understand them, most of them seem to be laboring under one mistake, shared in even by those who ought to know better, that private temples will be declared to be 'public', and that Government is determined to assume all endowments, whether public or private, without any reason or justification—two ideas, both of which, as the Council well knows, are wholly foreign to the spirit of this Bill.

Per contra, the opinions of the supporters of the Bill will next be referred to. Out of the 28 papers received in support, 18 are from Namboori Brahmin jenmis, 3 from Paradesa Brahmin land-lords, 5 from Ambalavasies, one from a Sudra dignitary and one from the Konkanasta Brahmins of Ambalapuzha, Porakkad.

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As they all welcome the measure, pointing out specific instances of mismanagement and misappropriation of temple funds, I do not think it necessary to dwell further on the details of their opinions. It is enough to observe that they are unanimous in supporting the Bill, and that they *represent* the mass of Namboori and Ooraler communities whom the Bill will affect, and who, therefore, speak with the authority of personal and local knowledge of the circumstances of the endowments it deals with. Every one of the signatories in the above 28 papers is either a Tantri himself, or an Ooralen, or a Karanma, or a Sthanika of some temple in North Travancore, and cannot, therefore, be accused of a mere academic interest in the matters of which he speaks. Their representative character may be gathered from the following details of some of the signatories.

One is Puthumana Damodaren Nambooripad of Ampalapuzha, a gentleman personally known to me for about 20 years, and his testimony is particularly valuable to the Bill, as he is the Tantri of the important Sircar temple at Ampalapuzha and of more than 50 non-Sircar Ooralma temples in the State besides. He is a middle-aged, calm, and thoughtful-looking sort of person, and in knowledge of the condition and wants of these temples or their properties, he is probably unsurpassed by any other Namboori dignitary in the land. The aged Potti of Ongallоor, said to be 82 years old, and himself one of the Ooranmakars of the Payippaud temple in Changanaseri, bears unmistakable evidence as to the deterioration of numerous temples within his own personal knowledge owing to the want of check or control and the necessity for a law of the kind now thought of.

Here is the evidence of one Narayana Mangalathu Moothathu, one of the Ooranmakars of the Trikkudithanam temple, said to be one of the temples founded by the Pandavas in Malabar. He writes:—"There were more than 2,000 paras of paddy lands and 160 compounds belonging to this (Trikkudithanam) temple. More than three-fourths of the properties are alienated. The present income will be just sufficient, if properly cared for, for its bare maintenance. But owing to the difference of opinion among the managers, the income is wasted." "The incomes derived from the trust-properties are not utilized for the purposes of the temple. The affairs of the temple were managed by my family and by the Samudayam and Koimas appointed by the Pazhoor Mana. There were no competent persons in my family and, therefore, the management of the temple was taken up by the Ooranmakars, though they had nothing to do with the temple formerly. The present manager is Ayeradathu Potti. Koimas and Samudayams do not now exist, but expenses on that item will be found in the account."

"This institution is enriched by the bounty of rich citizens. There is provision made for Dwadesi namaskarams and other charities. The sreekoil, mandapom, dhwajam &c. are constructed by the karakars. If such a rich institution as this is governed by proper managers, this will soon reach a prosperous condition.

"When the present Bill becomes law, it will be a source of protection and safety to all the endowments of the kind."

Mathoor Paniker, a Sudra of the first rank and possessing high privileges and large estates, is another valuable witness, who writes:—

"Private temples are rightly excluded from the scope of the Bill. Temples which are established by a group of families for their own use may also be included in the category of private temples. All other temples are meant for the use of the public in general. Their managers look after the affairs in the capacity of trustees. The arrears of pattom in these endowments cannot be collected according to the provisions of the Bill as Government arrears of tax. But civil suits must be had recourse to. This entails great loss to the charity funds. So, provision must be made to collect such arrears as Government dues.

"The period of limitation to these properties must also be the same as that allowed to Sircar properties.

"The Ananda Narayanapuram temple at Alleppey and Takazhy temple have lost most of their properties. Champakulam, Koyikaray and Chaniyathukavoo Bhagavathy temple have been completely blotted out of existence.

"If a law of this kind had existed in the past, these charitable endowments would not have incurred such losses as they have already incurred.

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"This Bill will be greatly acceptable to the public. If any body raise any objection, it is because he is ignorant of the wishes of the people. It is admitted by many that this Bill will be beneficial to a great number of people."

I will pass over the opinions contained in the other vernacular papers and proceed to a brief consideration of the English opinions received. The best support to the Bill comes from them; and though a large number of my valued correspondents will disclaim knowledge of any local conditions or local circumstances, the Council will remember that there is nothing special or local in the creation of trusts for religious or charitable purposes, such not being confined to any nation, age or clime. So, the administration of trusts as the incumbent duty of the Sovereign has been recognised by the law of all civilized nations, both in the past and the present. And my correspondents, as men of culture and experience gained from their life-long careers as statesmen, judges, civilians, revenue officials, or lawyers, both in and out of Travancore, are most fitted to speak on the subject, with an authority which cannot be disputed, and the Council will be gratified to learn that the volume of such opinion secured in our support is strong and irresistible, thus showing, on their part, that the cause of these ancient and valuable endowments is dear to them, no matter at what distance situated or under what different sovereignties. To this chorus of valued and weighty opinion in support of the Bill, there is, however, one notable exception, and that is the memo of Mr. Shungrasoobyer C. I. E., the late Dewan. I have studied this opinion carefully and have been astonished at the curious jumble it contains of pedantry, patriotism and extreme socialism. And if I did not owe some regard to the distinguished position which he held in His Highness' service, I should have altogether discarded it from notice and spared the Council the labour of listening to a refutation of his worthless criticisms. But as it is, I may be expected to refer to the memo, and I will just refer to one or two of his statements. The minor points of difference will be passed over.

Mr. Shungrasoobyer has come to the conclusion that "the Bill is objectionable in principle and that it is unnecessary, inexpedient and impolitic", a conclusion which is by no means formidable, for Mr. Shungrasoobyer is, after all, not a professional lawyer but a layman like myself. And when to this fact is added the circumstance, that this piece of legislation has been started at the instance of our learned President, whom the erudite Mr. Chellappa Pillay styles as our 'Jurist-Dewan'; and when the Council remembers that the learned Judges of our High Court observe that "the object of the proposed legislation, viz. the better protection and proper administration of Hindu Religious and Charitable institutions, must commend itself to every right-thinking man and is likely to command the sympathy of all Hindus." "Whatever difference of opinion there is or may be" they said—"there can hardly be any as to the cardinal principle affirmed by the Bill, viz. that it is the undoubted right and duty of the Government or Sovereign power to interfere in the affairs of these institutions, whenever such a step is found necessary for their conservation and protection"; and when it is further known that, amongst the supporters of the Bill, are such honored names as those of Mr. A. Sashiah Sastri C. S. I, the Honorable Sir. S. Subramony Iyer, K. C. I. E., the Honorable P. Rajaratna Mudaliar, Dewan Bahadur, C. I. E., Mr. V. P. Madava Row C. I. E., Mr. Kerala Varma C. S. I., Valia Coil Tamburan, Messrs. T. Chellappa Pillay B. A. B. L., Dewan Bahadur Reghunatha Rao, Romesh Chunder Dutt C. I. E., T. Vedadrisadasa Mudaliyar, Honorable C. Jambulinga Mudaliyar, Rao Bahadur B. A. M. L., Mr. Rai Hukum Chund M. A., Mr. Rai Bahadur Srinivasa Charlu (Superintendent of Charitable Institutions, Mysore), Mr. M. R. Ramakrishna Iyer B. A. B. L., F. M. U., and Mr. K. Kuruvila B. C. E., the Council will readily recognize that Mr. Shungrasoobyer's opposition is not only *impotent*, but quite *innocuous*.

Mr. Shungrasoobyer writes: "Statements of mis-management, mis-appropriation, fraud &c. in the case of trusts of the kind under consideration are readily made. But their authors seldom stop to analyse. Impressions formed from hearsay, from appearances, or hasty generalisation, may lie at the bottom", and then, in the same breath, he says, "there is no denying the fact of deterioration which is a common feature with all these old institutions." "The alienation of temple properties, non-recovery of rents, irregularity in the performance of poojahs and other ceremonies, servants' wages falling in arrears, frequent civil suits, enforcement of decrees affect-

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ing michavaroms, all these portray the course of deterioration going on." These contradictory statements appear to me to be extraordinary. If the deterioration is a fact, as testified to by himself, I wonder what need there can be for "a regular, systematic and open local enquiry" of which he speaks. As regards the inquiry and the nature of the data furnished by me in previous speeches, I will quote Mr. T. Chellappa Pillay's words. He writes, "Mr. Nagam Aiyer has at great pains done what a Royal Commission in England did in 36 years at a cost of £ 240,000 (17, Jur. part II, page 113). Any further enquiry will, I think, be a mere waste of time and money. Mr. Nagam Aiyer's enquiries have elicited the fact of gross abuses prevailing in many of the temples."

With regard to Mr. Shungrasoobyer's astounding statements, that "at no period, I think, the outside public ever care to know the internal economy of these institutions. Much less would they interest themselves about them *now*, when a change has come over the spirit of the times. The mover draws a vivid picture of the decline of the temples managed by private bodies, and, as an illustration, mentions the Ooralma Devaswom at Thrivikramangalam." "The Ooralma temples have suffered. They are in decay. Quite true. But has the community or any section thereof suffered? Is the State worse off on that account? Has the social, industrial, economic or intellectual progress been thereby retarded? The Thrivikramangalam Devaswom is in a bad way. But which man or woman residing in the neighbourhood is really affected or aggrieved?", with regard to these statements, I beg to draw the attention of the Council to the following forcible remarks of the Honorable Rao Bahadur Jambulinga Mudaliyar, B. A. M. L., which I quote from his Note on the Bill. He says:—"Judged, therefore, from past experience, whether in British India or in Travancore, an efficient supervision and control over the management of trustees seem to be essential to keep them straight. Doubt has been expressed whether it is necessary at all to take notice of the condition of these institutions and whether it would not be well to leave them severely alone to take care of themselves. In one of the criticisms on the present Bill, I see it stated: 'The Ooralma temples have suffered. They are in decay. Quite true. But has the community or any section thereof suffered? Is the State worse off on that account? Has the social, industrial, economic or intellectual progress been retarded thereby? The Thrivikramangalam Devaswom is in a bad way. But which man or woman residing in the neighbourhood is really affected or aggrieved?' I do not know what following these views have in Travancore. All I can say is that these are arguments in favour of the gradual extirpation of all Hindu religious institutions as useless appendages of Hindu society. It does not seem to be quite relevant to consider whether the State will be worse off on that account or whether the social, industrial and other such progress will be retarded. I do not believe that Hindu society has so far advanced in iconoclastic ideas as to favour the extinction of its hoary and time-honoured religious institutions, nor do I believe that such a time will ever come. So long as the beliefs and affection of the society are centred in those institutions and so long as they are not of positive harm and mischief to the State, it seems incumbent upon the State to adopt suitable measures to protect them from ruin, a condition that would wound the tenderest susceptibilities of their votaries. This seems to me the stand-point of legislation and administration. Further, the State cannot afford to be an indifferent spectator to the systematic practice of fraud and corruption by the uncontrolled trustees of public money, without incurring in public estimation the obloquy of unfeeling inattention to the people's welfare, and it cannot safely permit the wholesale contamination of the sanctuaries of public devotion with the vice and peculation of their venal officials." "A close adherence to the forms and models of British Government in all matters, without consideration of subjects and circumstances is not, by any means, essential to the progress and well-being of Native States. I fully appreciate the force of reasoning in the following sentences of Mr. Nagam Aiyar:—'This Hindu Government of Travancore are managing certain Religious and Charitable institutions,...this Bill simply seeks the extension of the benefit of the existing policy of the State to other institutions suffering from neglect or mismanagement. No departure from any established usuage or principle of this Government is intended. There is no analogy, therefore, between what was attempted to be done in British India and what this Bill proposes to do.' I would go further and say

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that even if the Hindu Government of Travancore were not already managing some such institutions, and they now contemplated to assume jurisdiction for the first time, they would be within the sphere of their proper functions, as they would be acting in consonance with the best and time-honoured traditions of all Hindu Governments."

Mr. T. Vedadrisadasa Mudaliar writes on the same point thus:—"An orthodox Hindu is taught by his religion to believe that by doing some charitable act to help his neighbours in any way, he benefits his own soul as well as the souls of all the departed members of his family. This charitable act takes many and various shapes. Temples for public worship and choultries for the comfort of travellers are the most important institutions generally adopted. The original donor invariably makes provision for these institutions and entrusts his surviving heirs or friends to conduct the charities after his demise. If these people who are the trusted trustees fail to carry out the intention of the donor, it becomes the duty of the Sovereign to interfere. According to the Hindu sastras, the relation between the Sovereign and his subjects is such that, according to the sastras, the Sovereign becomes liable to bear a share of the good or evil committed by his subjects. Hence, the need for Government to interfere and protect the charities created and endowed by the subjects of the State. Its right to do so cannot be questioned even for a moment.

"The British Government, in the earlier days, supervised all the temples in their districts under Regulation VII of 1817. It was only about the year 1841 or 1842 that, under some religious scruples, or for some reason best known to them alone, they disconnected themselves from the management of the religious institutions. As a matter of course, those institutions became badly managed and have suffered much ever since. I may also safely say that it is the opinion of the aged and highly experienced orthodox Hindus, that ever since the period of that disconnection, poverty and distress of some kind or other has prevailed and people have suffered in various ways. As remarked by a European, high in office, the mismanagement of those institutions has scandalised public feeling. Hence, no one who is a real Hindu following the precepts of the Hindu religion will hesitate, even for a moment, to welcome the introduction of the Bill under consideration, unless his mind labours under some strange ideas or misapprehension."

The Council will be gratified with the following statement of Sir Arthur Gordon—now Lord Stanmore—when he, as Governor of Ceylon, addressed the Legislative Council on the opposition which was being set up to the Buddhist Temporalities' Ordinance. Sir Arthur said: "To some, no doubt, this measure will be distasteful. It will be so to those who wish to let things alone, and allow everything to remain on its present footing. Two classes of persons combine in desiring this, though for very different reasons. That the majority of such priests as are incumbents of Viharas, who gain by the existing state of things and who will be deprived by the Ordinance of their present absolute control of the goods of their temples, should oppose this, or any other reform, is natural and intelligible, and needs no comment. But many of the strongest enemies of Buddhism also desire abstinence from all legislative intervention, being aware that existing abuses throw an amount of discredit on the Buddhist clergy, from which they do not desire to see them freed; and perceiving that if things go on as they now are, the pecuniary resources of the Buddhist monastic establishments, which they desire to see exhausted, will not long hold out. I confess it appears to me that, to refrain from interference for such reasons, is neither just nor moral."

I wish the Council to note that these words were uttered by a Christian Governor of a Colonial Province. It is not clear to which of these two classes of persons Mr. Shungrasoobyer belongs.

Again, Mr. Shungrasoobyer remarks:—"Speaking of the religious institutions managed by the Ooralers, they are known to be of ancient origin and of private foundation. The succession to their management has been perpetual by *inheritance*." Mr. Jambulinga Mudaliar answers this statement when he observes:—"Hereditary trustees and appointed trustees, all must submit to these conditions, as there can be no hereditary or prescriptive title to swindle and mismanage public trusts."

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Mr. Shungrasoobyer says: "No spontaneous representations are even known to have emanated from the public." To this it is a sufficient answer to say that the President wrote to me, about 15 months ago, thus:—"Every day I receive complaints of mismanagement of private pagodas. Now there is no written law empowering any authority to assume management and prevent waste. Necessity for legislation on this subject is becoming very pressing."

Mr. Shungrasoobyer thinks that private charities should be exempted from the Bill. It is difficult to see what he means by private charities. An object is charitable if it promotes public utility, or if its observance would lead to a public advantage. Mr. Shungrasoobyer only instances water-sheds or thanneerpandals as private charities. These will not be included in the present Bill, not because they are private, but because they are not "charitable endowments." He also takes exception to the proviso to section 2, containing the definition of a "private temple" which he calls 'arbitrary.' He contends that the fact that neighbouring people are allowed to use it does not constitute it "public." The section itself is clear and the proviso unnecessary. In the case suggested, the neighbouring people do not enjoy it as 'of right.' The Bill provides that the assumed Devaswoms will be treated like those under Sircar management. According to Mr. Shungrasoobyer, the assurance is meaningless if it does not mean that the Government is to provide for their up-keep out of State funds. But the assurance has a meaning. Till the Government thinks fit to appoint a committee, the revenue authorities will exercise supervision, collect rents, and spend out of the income of the several Devaswoms. The unassumed Devaswoms are, to submit returns to the Dewan. Mr. Shungrasoobyer asks, who is to look into them? This is a matter of detail and should be settled later on. But the returns, surely, are not without their uses, as preventing subsequent falsification of accounts by the trustees.

From these futile criticisms of Mr. Shungrasoobyer's, I turn to the sage and statesman of Kumbhakonam, Mr. A. Sashiah Sastri C. S. I., who, with his usual telegraphic brevity, writes:—"As you put it, the Bill is intended only to enable Government to institute enquiries in cases of flagrant breaches of trust, and to take such steps as may to the Government seem called for. A general *enabling* law of this kind can do no harm to any body but those who have benefited by the misappropriations. *Mere inquiry*, if properly conducted and properly explained, into alleged *abuses of trust* cannot result in evil. It may, on the other hand, induce peccant trustees to set their house in order, to stave off unpleasant investigations of malpractices."

To this may be added the weighty support of the Honorable Sir. S. Subramony Iyer, K. C. I. E., who writes:—"In a country like this where for ages it has been usual for endowments to be granted by the State and by private individuals for religious and charitable purposes, it has from time immemorial not only been the right but the duty of the Sovereign to take proper steps for checking peculation and ensuring the due administration of the trusts. It is true that there is great disinclination on the part of the British authorities to legislate in the matter. But I have no doubt that that is due to their ignorance of the real wishes of the public with regard to further legislation about it. Unfortunately for us, the Government of India seems to think that the general community is opposed to any such legislation. Whatever may be the case in other parts of India, it is impossible to doubt that in this Presidency all disinterested persons are anxious for the enactment of a more effective law than Act XX of 1863. The attitude of our Government should not deter His Highness' Government from legislating for the better protection of endowments in Travancore." "The principle to be kept in view, as you are well aware, is to leave due liberty to trustees in the carrying out of the charities, while devising a scheme of check and control that would enable persons interested in the trusts to get mismanagements put right without unnecessary cost and delay. I am looking forward with interest to what your Council is eventually going to do."

Mr. Romesh Chunder Dutt, C. I. E., the well-known Bengal civilian, now Lecturer in Indian History at University College, London, observes:—"I have read with much pleasure your speeches on the Hindu Religious and Charitable Endow-

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ments Bill of Travancore. The subject is one of great importance, and I am glad to find that the Hindu State of Travancore is dealing with it in an efficacious and statesman-like manner. You are, of course, aware of the difficulty of dealing with the subject in British territory. The opposition comes from two quarters. In the first place, orthodox Hindus naturally look with suspicion on any endeavour on the part of a christian Government to assume control over Hindu religious endowments. And in the second place, orthodox Christians, too, look with disfavour on any steps taken by a christian Government to manage Hindu religious institutions. Any action in the face of this double opposition is beset with danger." "No such difficulty exists in Travancore. The control of a Hindu State over Hindu religious endowments is recognized by our ancient scriptures, and sanctioned by ancient practice. Under these circumstances, I look with sincere pleasure on the action which you and the Travancore Council have taken to ensure the proper management of religious endowments in Travancore, according to the wishes of the pious and charitable donors. Your very able speeches,—and specially the speech of June last,—are exhaustive and thorough, and leave nothing to be desired." "I do not wish to go into the details of the Bill; but I cannot conclude without adding one word in appreciation of the very commendable moderation with which you are proceeding. You make it clear that the Travancore Government only seeks to exercise power in case of necessity; and the hope that you express, that the necessity may never arise for Government interference in any case, is the most admirable thing you have said in your very admirable speech."

The Honourable Mr. P. Rajaratna Mudaliar, Dewan Bahadur, C. I. E. writes:—"I feel sure that the Bill will be most useful in improving the management of temples which is now far from satisfactory. It was my idea, however, that a legislative enactment was hardly called for in a Native State where the Government should not be deterred by any considerations of religious neutrality from exercising control over religious institutions in its executive capacity. In British territory, it is the cursed Act of 1863 that has caused all the mischief, and here, therefore, there is an undoubted necessity for a new law."

Mr. Kerala Varma C. S. I., Valia Coil Tamburan, writes:—"The Bill, concise as it is, affords ample protection to those institutions from waste and mis-appropriation, and I fully support the measure."

It will thus be seen that legislation is necessary and that the principle of the Bill is sound and in this view, I trust, all right-thinking men will agree. I have already indicated that the interests at stake are enormous, and that a policy of inattention or indifference will be unjustifiable, whether the vastness of the interests involved or the past action of this Government is considered.

I wish also to add that my interest in this piece of legislation is only as much as that of my brother members in the Council. I do not claim more.

Nor am I so hopelessly committed to the provisions of this Bill as not to be able to see that the collective wisdom of this Council may hit upon a better Bill, clearer and more complete, and in every way, unobjectionable. It is amply clear from the discussions on the Bill in the public prints, which, I acknowledge, have been, as a rule, most fair and generous, as well as from private letters that mis-conceptions are general and that, therefore, modifications and amendments may be necessary. Even our learned High Court fall into the common error of believing, for which there is no foundation whatever so far as the Bill goes, that "the maintenance of the poorer institutions, when assumed by Government, would, in all probability, entail additional charge on the public exchequer, if not otherwise met." It would, therefore, be no reflection on the common people, if they are misled by scheming persons into believing that the Sircar wishes to profit by the savings of the endowments. There are also other points on which differences of opinion may exist, as when the High Court remark that "the current orthodox conception in Keralam, including Travancore is that most of the Ooralma temples of the sort left untouched by the Sircar in 993 are the property of the Ooralens, though devoted for public worship, or at least that they have substantial proprietary rights in the endowments of those

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institutions, and these orthodox popular ideas, erroneous they may be, have been strengthened by the action of the British authorities in Malabar, and of the Travancore authorities since the year 993 M. E."

Speaking for Travancore alone, I can confidently state that the temples left unassumed by Colonel Munro in the last century did not thereby acquire any special status of immunity or independence from Sircar supervision. The popular view on the point is clearly incorrect, as is the old saying 'that a man who went into a temple for a long course of Bhajanom subsequently claimed Ooralmaship in it." With regard to the distinction between private and public temples in Malabar, I have already drawn the attention of the Council to the remarks of Sir. T. Muthuswamy Iyer's Committee on them, and they are conclusive.

While section 13 of the Bill, which prescribes a fine of 10 rupees on a defaulting committee-member is considered obnoxious by several of my correspondents, one gentleman says it should be raised to 200 fanams or 28 Rs. Again, it will, ordinarily speaking, be considered a great gain to the cause of local self-government, if a proportion of the committe-members as contemplated under the Bill, were *elected*; but so eminent a lawyer as the Honorable Sir. V. Bhashyam Iyengar Kt., doubts its ultimate value, for he says:—"The elective principle does not work very well even in British India. How it will work in a Native State like Travancore where there is so much exclusiveness in social life is a matter on which you can form a better judgment than myself."

Dewan Bahadur Reghunatha Rao would omit, in section 8, clause (2) the words "and embraces some other religion," 'as there will be hereafter' he says, 'a large majority of men professing no religion.'

Section 511, upon which there seems to exist a considerable divergence of opinion, may have to be retained or amended, as suggested by the High Court, in the interests of private rights, though it is difficult to see how that alone will meet all the requirements of the Bill, which include provisions of check and control over Devaswoms, as laid down in sections 16 and 17. The Council will remember that since Lord Romilly's Act, which is the parent of our section 511 of the Civil Procedure Code, three Charitable Trusts' Acts have been passed in England viz. those of 1853, 1855 and 1860.

On this point, I will quote the opinion of Mr. M. R. Ramakrishna Iyer B. A. B. L., F. M. U., an experienced Vakil of the Madras High Court who had been for 10 years, as he himself writes, "an active member of a Committee having over 200 temples under its control in one district." After giving his support to the principle of the Bill which he thinks "is necessary in our country and will prove highly beneficial," he observes:—"While I have advocated the retention of section 511 in the Statute Book, I do not think that, having regard to the characteristics, nature and habits of the people, a provision of the kind is sufficient to act as a deterrent against malfeasance and misfeasance on the part of the trustees. In this part of the country, we have had a similar provision for a number of years, and with the exception of a few rare instances, little practical good has come out of it in the way of checking mismanagement and malversation. Among our people of position (I do not refer to the educated section), there is disinclination to go to Courts even as witnesses, and such men have a positive repulsion to go as party complainants in matters which do not directly affect them, though they feel that things are not what they ought to be. Whatever the reason, this enabling provision in C. P. C. has been practically found to be insufficient and that is the reason why the people of this Presidency, the educated and the uneducated, have with one voice been demanding legislative help for checking mismanagement of religious endowments." He, therefore, suggests that "section 511 of the Civil Procedure Code ought not to be repealed but should be retained. There is no harm in the Government or the proposed Committee and the Civil Courts having concurrent jurisdiction over trusts and trustees."

Mr. Rai Hukum Chund M. A., the talented Under-Secretary of the Hyderabad Legislative Council, in the course of a long paper on the subject, observes with regard to section 16:—"The very first essential for the exercise of the powers under the

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Bill is the acquisition by the Government of full information relating to the private management of the endowments. You attempt to provide for the same in section 16, the first part of which relating to the accounts and the lists, on that very account, should, I think, be general and compulsory, and not dependent for its operation in particular cases on the discretion of the Dewan. In fact, the very submission of accounts and lists may lead to great improvement in private management, and may often avoid the necessity of the assumption of the management by the Government. The accounts and lists may also be ordered to be filed in District Offices, and powers of enquiry and report as to them, allowed at least to some extent, to officers in charge of districts. I am doubtful, however, whether non-submission of accounts or lists should, as such, be made a special crime, as evidently the best punishment for it would be the exclusion of the trustee or manager in default, from management, and, if necessary, the assumption of the management by the Government."

These are some, among the several points of differences of opinion, which will have to receive the attention of the Council.

In concluding, I may remind the Council that a great responsibility rests upon them, as our action here is, I am informed, being watched with keen interest, both in the model Native State of Mysore and in the premier Native State of Hyderabad, where similar legislation is desired.

With these remarks, I beg to move for the affirmation of the principle of the Bill.

Mr. Kunhiraman Nair.—I need not occupy the time of the Council by any lengthy observations at this stage, especially as my views on this Bill generally will be found embodied in a memorandum submitted by the High Court to Government which, I believe, has as usual been circulated among the members of the Council. I do not oppose the motion for introduction of the Bill. I recognise the necessity for some sort of legislation for the better protection of the religious and charitable institutions, but the legislation can justly and equitably be extended only to such of them as have, hitherto, been taken by the Sircar to be institutions of a public kind, and worthy of the exercise by them of the right of Melkoima or the general superintendence of endowments vested in the Sovereign. It would, I am afraid, be considered a gross breach of faith, if other institutions, especially such institutions as have, for centuries past, been under purely private management of ancient families, in whom the Ooralmaship is hereditarily vested, are now for the first time to be brought under legislative restrictions. These latter have, for at least more than three quarters of a century, or ever since the assumption, under the regime of Col. Munro, of the greater national temples in 987 M. E., been regarded as institutions belonging to Ooralens whose rights have been considered hereditary and heritable, as may be gathered from the fact of the Sircar itself having, in several instances, taken, by right of escheat, the place of Ooralens whose family became extinct, and of the Melkoima right being expressly retained only in particular institutions. I do not deny the cardinal principle which, I believe, is sought to be affirmed by the Bill, viz., that it is the undoubted right and duty of Government or Sovereign Power to interfere in the affairs of the public religious and charitable institutions, whenever such a step is found necessary for their protection and conservation. Such right and duty are inherent in the Sovereign as *parens patriæ* and are included in what is termed popularly as Melkoima, and legislative sanction may be accorded to them; but it is one thing to possess a theoretical right and another thing to attempt to enforce such right to the detriment of private rights and interests, which have been allowed to spring up in course of time as a prescriptive right, and I doubt very much the substantial justice and the expediency of reviving, at this distance of time, the right of Melkoima over all kinds of institutions in which it has, for centuries past, been allowed to become obsolete. The precise line, however, on which legislation should proceed on a constitutional basis, i. e. without contravening and setting at naught the recognized principles underlying legislation in every civilized State, can be properly determined only after a thorough enquiry as to the causes of the evils intended to be remedied by the legislation. Such an enquiry directed to ascertain all the causes of the suspected evils does not appear to have been hitherto made; at least there is no trace of such enquiry in any of the papers I have come across, though the learned member in charge of the Bill seems to have taken considerable pains to obtain the opinion of

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intelligent and able men, here and elsewhere, as regards the general necessity for legislation in regard to religious and charitable trusts. If it is intended to proceed with the legislation precisely on the lines sketched in this Bill, that is, by including within the scope of the legislation every temple in the country in which the public have the right of worship, I should request the learned member in charge of the Bill to procure, through the agency of local revenue officials, precise and reliable information on the following points without which it is impossible to come to a definite conclusion as to the expediency and necessity of the measure:—

(1) What are the circumstances under which, and the reasons or causes for which the Sircar, during the administration of Colonel Munro as Dewan, assumed the management of what may be called the greater national temples and left unassumed the remaining temples in the country, leaving them to private management?

(2) In how many of these temples has there been malversation or deterioration of the endowments?

(3) What are the causes of the deterioration, if any? Are they attributable to the dishonesty or gross neglect of the private trustees or Ooralens, or to the quarrels or dissensions among them, or to the difficulty of realizing the rents and profits of the endowments which consist mostly of landed property? and

(4) What is the number of temples under private management in which the Sircar is one of the board of Ooralens and what is the number of such temples in which the Sircar has been exercising the right of Melkoima or supervision by the Sovereign Power, and in what mode has such right been hitherto exercised?

It is superfluous to add that we should not proceed with the legislation without having all the facts before us, and that a proper diagnosis of the evils should precede the prescription of remedies. The policy of assumption by the Government directly of such of the Hindu temples as have, for centuries, been left purely under private management, without any interference from the Sircar in its capacity of Melkoima, is open to considerable doubt, and from the stand-point of the general public, is not regarded as conducive to the well-being of the institutions. The trenchant remarks of eminent jurists and political economists like Bentham and Adam Smith deserve the serious consideration of this Council. The former, in his "Theory of Legislation" says, "The Government is incapable of managing specific property to advantage. The administration of such property belonging to Government costs much, brings in little, and is certain to undergo rapid deterioration. This is a truth which Adam Smith has demonstrated." In connection with public institutions left purely under private management, the power of the Sovereign as *parens patriæ* is to be exercised, if it is to be exercised on constitutional principles, in the manner contemplated by section 511 of the Civil Procedure Code, which was introduced subsequent to the decision of the Royal Court of Final Appeal in Case No. I of 1062, referred to in the second speech of the member in charge of the Bill, and which has the effect of superseding the earlier ruling. That a case-law inconsistent with the express provision of a subsequent Statute can no longer be regarded as law of the land, admits of but little doubt. This is not my individual opinion only but the collective opinion of the local High Court as now constituted, based upon Madras High Court rulings and upon the history of section 539 of the British Indian Code from which section 511 was taken, and of the corresponding English Statute—52, Geo. III, Chapter 101. If the law contained in section 511 is considered defective in any respect, the remedy is to cure those defects by proper amendments of the section. But the amendments should not go beyond the demands of the proved necessity, and the State, as guardian and representative of the public, must reckon with the feelings and sentiments of those to be injuriously affected by the proposed legislation, taking care not to ride rough-shod over long-standing popular ideas, however erroneous they may be in strict theory of the law, and not do anything of a nature calculated to effect a virtual confiscation of the rights and privileges of any class of its subjects, unless there is strong and justifiable necessity for taking such extreme steps. The proposal for assumption of Devaswoms in general and that for negativing the judicial power of the Sovereign exercised through independent judiciary and for virtually transferring such power to the executive, are, in my view, retrograde steps which can, if at all, be sanctioned by the legislature only after careful and patient consideration of all the facts which have yet to be ascertained.

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One remark more, and I have done. This is an original piece of legislation unsupported by precedents, and we are dealing also with Ooralma temples on the West Coast which have not much in common with temples on the East Coast, and which have a history of their own, with primitive schemes for their management. The Ooralens of these institutions have been popularly looked upon as quasi-proprietors or persons possessing substantial hereditary rights and privileges in them, with the exception of a few in which the Ooralma or trusteeship is not hereditary, but is conferred by election. Under such circumstances, the opinions expressed by gentlemen outside Travancore, from impressions formed elsewhere and without special knowledge of the conditions and state of things here, though entitled to much respect and very valuable, so far as the general question of the propriety of legislation for trust property is concerned, cannot be put into the scales against the matured opinions, on this piece of special legislation, of other equally worthy gentlemen who have long been residents here and are acquainted with the popular sentiments and prejudices on the subject, and the safer course would be to take, as our principal guide, in determining the basis for legislation, the social and political condition as well as the usage and practice of the State.

Mr. Thanu Pillai.—We are, at this stage, concerned only with the principle of the Bill, though, in a measure like this, it is not easy to strictly confine the discussion to the principle without touching upon the details.

I wish to make a preliminary observation regarding the scope of the Bill. I can easily imagine the reasons for not bringing within the operation of the Bill non-Hindu religious endowments; but, I fail to understand why any distinction should be observed in the matter of charitable endowments on the score of religion. Endowments for charitable purposes such as the relief of the poor, education, medical relief &c., are secular; and it appears to me that no differential treatment on the ground of the religion of their founders is just or expedient. The beneficiaries of a charitable endowment founded by a Christian or Mahomedan benefactor may be, as they very often are, Hindus, no less than Christians or Mahomedans. Similarly, the beneficiaries of an endowment founded by a Hindu may be Christians or Mahomedans. Again, instances there may be, of endowments for purely secular purposes founded jointly by Hindus and non-Hindus. In British India, where the Government is so scrupulous in the matter of interference with the religion of the people, the same law applies to all classes and creeds in respect of public charity. I think, therefore, that so far as endowments, founded for exclusively secular purposes, are concerned, the same principle should apply to all.

The principle of the Bill, I take it, is contained in Section 5, which enables Government, by an executive order, to assume the management of Hindu religious and charitable endowments, in certain cases. The Council has now to decide whether the above principle is unobjectionable.

The learned Mover has told us that the object of the proposed measure is to protect the endowments from mismanagement and provide for their better management. This object is most laudable, and cannot but commend itself to every member of this Council. I may also observe that no argument or authority is needed to convince this Council, as I am sure that nobody here entertains any doubt, that it is the right of the State to guide and enforce all public trusts and correct any abuse or misuse of such trusts. What we have to consider is, whether necessity for legislative interference exists, and if so, whether the Bill before us embodies the correct principle—in other words whether the non-Sircar Hindu religious and charitable institutions are now so grossly mismanaged as to call for special legislation, and if so, whether the proposed measure contains the proper remedy.

As for mismanagement, "there is", to quote the words of the 'valued correspondent' referred to by the learned Mover, "no doubt a prevailing notion that religious and charity endowments have been mismanaged by private agencies." A prevailing popular notion, however, is different from digested and organic public opinion, and is often the result of misconception, error or passion. Such a notion, of course, cannot constitute a safe and sound basis for legislative action. The learned Mover has referred to the opinions of a number of respectable

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correspondents, and though it is probable that the correspondents, as observed by Mr. Shungrasoobyer "had in view but a few of the institutions generally well-known for their importance and large endowments", I think, these opinions, taken along with the personal testimony of the learned Mover, which, considering his vast experience and knowledge, is entitled to great weight, point to the conclusion that the condition of many of the institutions is far from what it should be.

As to the causes of mismanagement, the information before us is vague and meagre. Of 23 memorials received by the Council (the learned Mover has first referred to 39 petitions, but I have seen only 23), 12 are in favor of the Bill and the rest against it. The signatories of the latter, in whom are included such well-known names as the Ahavoor Namburipad, Paduthole Namburipad, &c., totally deny the existence of gross or wilful mismanagement in Oralma pagodas. Most of them point out that if any institutions are not properly managed, it is due, not to malversation on the part of the Ooralers (trustees), but to the difficulty they experience in recovering michavaroms, and to other causes for which the trustees are not, and cannot be, held responsible. The memorialists who advocate legislative interference, while they testify to the existence of considerable mismanagement, ascribe the mismanagement generally not to malversation on the part of the Ooralers, but to various other causes. Damodaran Purushothaman Elayathu, for instance, refers to a pagoda (നെട്ടൂർകാവിൽ ഭഗവതി ക്ഷേത്രം), which has lost its property on account of the intrigues of a non-Hindu ryot and *in spite of the earnest efforts* of the trustee to preserve the endowment. Kumaramangalathu Kadambar Namboori attributes the unsatisfactory condition of the pagodas to dissension among the trustees. Edamannur Vasudevar Kadambar Namboori ascribes the mismanagement to difficulty in recovering michavaroms, to want of harmony among the trustees, &c. Turning to the opinions with which some independent and highly respectable gentlemen have favored the Council, we find that Mr. Kuruvila, aptly described by the learned Mover as "one of our retired officers, but young and highly educated, and a former member of this Council," writes:—"Devaswoms controlled by a single hereditary trustee or Ooranmakaran are comparatively free from decline", and he adds, that the mismanagement in Devaswoms controlled by more than one trustee is due chiefly to want of harmony among the trustees. Mr. Shungrasoobyer says:—"There is no denying the fact of deterioration, which is a common feature with all these old institutions. I am not, however, prepared to attribute it to malpractice or mismanagement." He adds:—"The Brahmin jenmis, as a class, are well-behaved, god-fearing and simple-minded. They are faithful to their family traditions and behests. It is a point of honor with them to maintain the pagodas under their charge in as good a condition as circumstances would permit." The cause of deterioration of the Devaswoms, according to him, is "the absence of anything like the facilities for the recovery of their michavaroms which exist in the collection of Government dues." The High Court observe: "The Ooralers, as a body, cannot be accused of mismanagement. The impression we have formed in the course of our judicial experience is that mismanagement prevails, to some extent, in the case of several Devaswoms in which the trustee-ship is vested in more than one joint family or house, or in which the trustees are appointed by election. The causes of such mismanagement and the consequent deterioration of the endowments are not attributable solely to the individual conduct of the trustees." The High Court proceed to examine the causes, the chief of which, in their opinion, is the difficulty experienced in recovering the dues. Mr. Ramalingom Iyer, District Judge, says:—"What is really needed is summary powers in the trustees for the realization of Devaswom michavarom and other dues."

The above opinions, which coincide with the result of such enquiries as I have been able to make in the matter, lead to the following conclusions:—

(1) Institutions (religious and charitable) which are under the management of single trustees are generally well-managed;

(2) Those which are under the control of a plurality of trustees are, in many cases, subject to mismanagement;

(3) The mismanagement is generally due, not to misfeasance or malfeasance on the part of the trustees, but to other causes, of which the chief is the difficulty experienced by the trustees in recovering the michavaroms.

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I wish to guard myself from being understood as claiming for the above propositions the character of demonstrations. It is just possible that a thorough investigation may tend to disprove the above conclusions and disclose the real extent, nature and cause of the evil. All that I mean to assert is, that the evidence now before the Council points to the above conclusions.

If the diagnosis above indicated is correct, it appears to me the remedy proposed, apart from other considerations, is inadequate. Clauses (*b*), (*c*) and (*d*) of section 5 embrace only a small proportion of the institutions. Clause (*a*), which contains, so to speak, the vital principle of the Bill, deals only with "cases of misappropriation, malfeasance, misfeasance and gross negligence in the administration of the trust.". Now, the evidence before us shows that, in the vast majority of cases, the mismanagement is due, not to misappropriation, malfeasance, misfeasance or wilful neglect on the part of the trustees, but to a variety of other causes. What these causes are and how they may be dealt with can be determined only after a thorough investigation; but a remedy which leaves the principal causes of the disease untouched seems to be of comparatively little avail.

There is another and a more serious objection. The proposed remedy, while it leaves the most potent causes of the evil alone, involves, in my humble opinion, undesirable disruption of cherished associations and unnecessary interference with vested rights. Unlike in British India excepting Malabar, the Pagodas in Travancore are mostly private *i. e.*, they belong to single families or groups of families. In this latter category are included the Ooralma pagodas, karakshetrams and oorkoils. The endowments are not *public* trusts; they are generally of the nature of devises, subject to certain charges for religious or charitable puposes, and the beneficial interest vests in the trustees subject to such charges. The managers or Ooralers are not trustees in the proper sense, that is, persons in whom the equitable, as distinguished from the legal, estate is vested. "The current orthodox conception," observe the High Court, "in Keralam, including Travancore, is that most of the Ooralma temples are the properties of the Ooralers, *though devoted for public worship.*" The Bill is intended to apply to all these institutions. I do not overlook the fact that the proviso to section 2 excludes from the operation of the Bill every Hindu temple "solely intended for the use of the founder or members of his family." But this proviso would not, in practice, put a single temple outside the purview of the Bill. As the Valia Koil Tampuran has pointed out, "there is no temple in the State which is not frequented by the public and in which offerings from the public are not coming almost daily." Nor is it possible, to quote the same high authority, "to ascertain by local enquiries, at this distance of time, whether such temples are dedicated to the public or not." I entertain serious doubts as to whether in the case of endowments of the kind above indicated, where the trusteeship is hereditary, even the misfeasance or malfeasance of the present trustees would justify the taking away of the private rights which, as observed by the High Court, "have sprung up in connection with endowments under the hereditary management of joint families.....The misfeasance and malfeasance of the senior member, who may act as trustee for the time being, do not justify the deprivation of the rights of the family as a whole. The sins of one man cannot be visited on his innocent co-parceners who are entitled to assume the office of Ooraler, whenever their elder *proves to be incompetent.*" In the case of karakshetrams and oorkoils, the existing system of management is, I believe, a survival of local autonomy. The managers constitute an assemblage of co-proprietors like the members of a village community or the Roman *gens*, holding a domain in common. They form organized societies with a staff of functionaries for the management of the common fund, the Sovereign's right of superintendence as *parens patriæ*, being, in some cases, exercised by the Koima or Mel-koima.

I admit that the existing machinery of management of the institutions is archaic, but I venture to think that our endeavour ought to be to mend it and not end it. "The supersession of the Ooranmakars," as observed by Mr. Kuruvila, "is an extreme measure and should not be attempted before exhausting all possible chances of inproving the administration through the Ooranmakars themselves."

The learned Mover has favored us with extracts from private letters from several eminent gentlemen in British India. I think these gentlemen had in view

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purely public trusts, in which category fall the bulk of the endowments in British India, excepting Malabar, and not private or quasi-private endowments, such as many of the institutions in Travancore are. After all, what do they advocate? An efficient control and supervision over the management of trustees. I think nobody in this Council will question the soundness of this view. What is objected to is not any amount of control or supervision over the trustees, but their summary supersession, not the sweeping away of the cobwebs of peculation and corruption which disfigure some of the institutions, but the pulling away of the foundation-stones of a venerable and still widely venerated and, in many respects, admirable system of management. The Honorable Mr. Anandacharlu's Bill to amend Act XX of 1863, which may be said to embody the opinion of the advanced section of the Indian public on the subject, does not, even in respect of purely public trusts, contemplate the assumption of management by the State, but merely provides for improving the constitution of the Committees and vesting in these Committees all powers over the trustees and managers. The following is an extract from the Statement of Objects and Reasons: "The Bill proposes to leave the existing trustees where they are. It allows their successors to come in, in accordance with the usage in vogue in each institution in that behalf. It leaves untouched all the trust property and income in the very hands which now hold them.....It is proposed to enlarge the powers of the Central Committees relative to holding enquiries into the conduct of trustees, and dispense with the necessity on their part to obtain prior sanction to sue, which the present law enjoins; while the trustees will continue to enjoy the present safety against harassment by any action of Committees, by being liable to dismissal only by means of the decree of a Civil Court."

The forgoing considerations lead me to entertain serious misgivings as to the soundness of the principle of section 5 of the Bill *in respect of endowments which are not purely public trusts*, except cases in which all the trustees having power so to do voluntarily surrender the management to the State, and perhaps also cases where, by the operation of the law of escheat or from other causes, the State already exercises a direct control over the institution.

If this view is accepted, it would, I am aware, exclude from the operation of the proposed measure the bulk of institutions which require protection. I do not contemplate this with satisfaction. There is, as I have already said, reason to believe that the present condition of many of the institutions is far from satisfactory, and I feel that, in the interests of the temporal as well as spiritual welfare of society, the State cannot be indifferent as to the existing condition of things. I hold, therefore, as strongly as the learned Mover, that legislative action for the protection and the better management of the institutions is imperatively necessary. But, in my humble opinion, the measure devised should be reformatory and not merely punitive, should primarily aim at providing opportunities for reform, and resort to punishment only in cases where such opportunities are wilfully neglected. The measure should be so devised as to preserve from deterioration the *corpus* of the endowments and ensure their efficient management, *with the least possible infringement of private rights or interference with the existing machinery*. In the absence of correct and sufficient data as to the real extent and causes of existing mismanagement, it is not possible to clearly indicate the outline of such a measure. One or two points, however, may be mentioned. Some provision should be made for the easy recovery of michavaroms and other dues. Where there are more trustees than one, their powers and responsibilities, individual and joint, should be clearly defined, and rules should be prescribed for the conduct of their business as trustees. The powers of the Koima or Melkoima should be defined and enlarged in some cases. The executive should have power to enquire into the conduct of individual trustees and deal with them, subject to an appeal by the aggrieved party to the Civil Court. Government should also be empowered to frame rules for the election or appointment of trustees with due regard to custom and usage, and also, where no definite and workable scheme of management exists, to lay down such a scheme. Section 511 of the Civil Procedure Code should be amended, and procedure by petition, instead of by suit, as suggested by the High Court, should be prescribed.

I am persuaded that a measure, somewhat on the lines above indicated, will remove the mis-apprehensions which now prevail, disarm all opposition, and secure the noble object which my esteemed friend the Mover has in view.

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Mr. Prince.—I do not mean to occupy your time long, but wish only to make a few general remarks on the principle of the Bill. The object of the Bill, as my learned friend the Mover has said, is the protection and better management of the Hindu religious and charitable endowments, and the only question, to my mind, is whether it can be done upon the principles laid down in the Bill. I think the Bill before us goes too far. It involves, as has been observed by the High Court the punishing of whole families for the sins of the few. What we want is a Bill which will enable the Government to periodically supervise these charity endowments, and, where it is brought to their notice that things have gone astray, to make enquiries as to whether the statements made are correct, whether there has been defalcation or peculation, or whether the funds are diverted to improper uses, and then to set things right by providing a better machinery for management. But, to my mind, that interference should not be with the rights of the people, by the Government coming in and, as it were, confiscating the endowments. I would rather leave the management to a Committee and allow the people to elect fresh trustees themselves, when a necessity arises. They know the local wants and conditions and it is likely that, if the people are allowed to put in their own men, they would elect honest men, who, I think, would be in a better position to manage the institutions to the satisfaction of the people than the Government itself. But the Government should, no doubt, have the power of framing rules as to how the temples should be managed and to provide certain checks in the way of calling for periodical accounts or sending officers to inquire into the state of things. It is only when the people themselves are unable to set matters right and want remedy, that the Government should step in. I would also suggest that, before proceeding further with the Bill, steps may be taken, through a Commission, to collect fuller information regarding the endowments contemplated in the Bill.

Mr. Sivasubramonia Pillay.—I have listened with much pleasure to the speech of the learned Mover of the Bill. I have had the advantage of reading his previous speeches on the subject and the letters written to the Council by eminent gentlemen, and also the opinions expressed by a host of Namboori land-lords from the North. I may discard from consideration the opinions of the last class of people, as in their letters they do not enter into an intelligent discussion of the great principles involved in the Bill, but simply say 'yes' or 'no' from sentimental motives. Now, the learned discussions of the learned men of the day centre round two points in the Bill, namely the scope of the Bill and the principle of assumption contemplated in the Bill. There are also side issues viz., whether section 511 of the Civil Procedure Code can be done away with, and whether the Peishcar's report alone is sufficient for assumption purposes. We will proceed to consider the issues one by one.

What is the scope of the Bill? The Bill says, it applies to Hindu religious and charitable endowments as defined by this Regulation, except such as are already under the management of the Sirkar, provided that no Hindu temple solely intended for the use of the founder or members of his family shall come within the operation of this Regulation. Again, in section 3, 'Hindu Religious and Charitable Endowments' shall mean and include every Hindu temple dedicated to or used as of right by the Hindu community or any section thereof, and every chuttrum, choultry &c..... by which property or money is vested in the hands of any person or persons.' Now, reading sections 2 and 3, nobody can say what the scope of the Bill is. The scope of the Bill ought to be limited as sugggested by Mr. Ramalinga Iyer in his letter, according to the principle embodied in section 511 of the Civil Procedure Code, *i. e.* the Bill should be made to apply to public trusts and public trusts alone. Now, what are public trusts and what are private trusts? Some critics require, therefore, that an enquiry should be set on foot, an inventory of temples and endowments made, and that Government should declare once for all what the public trusts are to which the Bill should apply. Such, no doubt, is the opinion of the High Court and that of the Honorable Mr. Shungrasoobyer and some others. That objection has no doubt much force. We must know about what we are legislating. But the High Court suggest an alteration too. They say, if the Government is not going to have an enquiry and prepare a list of public temples and charities, then the definition should be so recast as to be easily capable of application to cases that may occur. I agree with this opinion of the High Court and would, therefore, enlarge the definition of private temples given in section 2. One Damodaran Namboori of Chemplavoo Karay asks, if a temple founded by one man for his use be considered private, why

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not a temple founded by four persons for their common use be also considered private? This argument has some force. In the same way, it may be said that the village temples of South Travancore founded by particular castes or communities for their exclusive use, owning valuable endowments which are all their own, cannot come under the Bill, for corporations are private persons in the eye of the law, and it will not be lawful for Government to interfere in their domestic management. What is said of the village temples in the south may well apply to the Ooralma temples and Kerakshetrams in the north. The High Court observe that at this distance of time it may not be possible for the hereditary chiefs and Ooranmakars of the north to give evidence of their proprietorship in the temples of which they are the hereditary managers. Well, if this is the case, each case as it comes must be dealt with on the merits.

Some may say that the village temples of large castes or communities are public temples. Now, it must be borne in mind that the word *public* is a slippery one. The village temples may be public for certain purposes and private for certain others. But in matters of property, and where civil rights are concerned, the village temples must be taken to be private institutions. Again, I must observe that the learned mover of the Bill has not drawn any distinction between public and private charities. The general rule of jurisprudence recognised by civilised nations is, that where the founder applies his own property to the creation of a pagoda or any other religious or charitable foundation, keeping the property itself and the control over it absolutely in his own hands, no trust is thereby created in favor of the public, even though the community may be greatly benefited by the arrangement. I would, therefore, clear up the mist and propose a definition of private temples and charities thus: 'No Hindu temple or other religious or charitable endowment solely intended for the use of the founder or members of his family or founded by a number of persons for their use and the use of their families, or by particular castes or communities for their exclusive use, having properties or endowments supplied by the founders, which are still absolutely in their hands and solely administered by them, and on which no trust in created in favor of the public, though the latter may have been greatly benefited by suffrage, shall come within the operation of this Regulation.' Such a definition, I beg to submit, will in a great measure narrow the scope of the Bill, and will supply the test for deciding whether a given trust is public or private. It will further allay the fears and apprehensions of the public. The next question for consideration is, given a case of mismanagement of public trusts, where the Hindu general public is interested and not a class or caste, is it not the duty of Government to interfere and set matters right? I submit, Government interference is absolutely necessary in such cases, and to regulate the mode of Government interference, legislation is necessary. We must make a law. Law is the measure, the boundary between the king's prerogative and the people's liberty. I do not agree with those that say there is no need for legislation. In support of their position, they say section 511 will amply suffice. We know as a matter of fact that that section has been a dead letter all along. That section is not easily workable. No doubt, under that section the Dewan has the power to sue, or authorise others to sue. I submit, this is one mode of interference, but this is not all. This mode of interference is intended to be resorted to by Government, when the affairs of an institution are such as admit of a leisurely treatment. But suppose there are urgent cases, then, should not Government be authorised to enter and put themselves at the head of affairs? This brings us to the consideration of the *assumption* question. After giving my best thought to the matter, I am of opinion that in the interests of public trusts themselves, Government should be armed with the power of assuming public trusts, if the necessities of the case demand the exercise of that power, a power which will only be honored in the breach and not in the observance. In keeping with the diginity of Government, the retention of such a power is necessary. In the Towns Conservancy and Improvement Regulation, the 3rd para of section 5 arms the Government with the power of dissolving Committees whenever they find it necessary. Of course, Government have not the idea of creating Committees with one hand and demolishing the same with the other. In this view of the case, I would support the principle of assumption. But I must confess that the Mover of the Bill has not properly worded section 5 of the Bill. The principle that should be inculcated and placed before the

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public view is the principle of Government *interference* and not of *assumption*. In my opinion, assumption is only one mode of interference. This is only a species and not a genus. Already, I have stated that proceedings under section 511 constitute one mode of interference. There are other modes of interference, too, which would commend themselves to your mind on a little reflection. From mismanagement to assumption, it is a great leap. Mr. Kuruvila, in his letter, advocates a slight scale of punishment to the recalcitrant trustees. If trustees mis-behave, first teach them, then suspend them, then dismiss them and appoint others; appoint an officer to supervise their working or appoint a Committee over them. Thus, there are several modes of interference. If the learned Mover had adopted these modes of interference, and stated that, as a last resource, Government would assume, there would have been an order in the sequence of thought, and the Bill would have been less misconstrued and found more favour with many. Even now, I hope this is what the learned Mover means *i. e.*, try with the trustees in a given case the preliminary modes of interference already suggested, and if they fail and there is no help, resort to assumption. If this is the main principle of the Bill, I have no hesitation in giving my support to the measure. The word *assumption* has a suspicious look about it and scares away men's minds; for they are afraid that this will be the stepping-stone for incorporating all the 10,000 temples with the State. If the principle of interference be adopted as the guide, section 511 C. P. C. may be retained as a species. There is a storm of opposition against the removal of that section, and justly so. Further, there is a hue and cry about Peishcars being directed to investigate and report on cases of mismanagement. In this particular, a remedy has been suggested by one Srinivasa Iyer of Kottayam, who recommends that in such cases a Punchayet should be appointed to investigate and that Government should act on the opinions of the Punchayet.

Another objection, that I saw in the papers, to this Bill is that, while Government is going to part with certain administrative powers to muncipal bodies, this Bill aims at bringing additional work to the Government. This view is shared in by some of the learned critics. But in the view that I advocate of the scope of the Bill, whereby the sphere of private trusts will be immensely increased and that of public trusts greatly narrowed, and that even in the cases of public trusts, Government will have to try a certain number of modes of interference, before the assumption power is exercised, and the enquiry antecedent to assumption must be conducted by a Punchayet composed partly of officers and partly of those interested in the trust, the fear entertained, of Government saddling itself with additional work and running counter to the principles of the Towns Conservancy and Improvement Regulation, will vanish. With these remarks, I give my support to the Bill.

Mr. Poonen.—Apart from the objections to the details of the proposed enactment—and on these I do not intend to address the Council to-day—I am not satisfied that a legitimate case for legislative activity has been made out. The interests which this measure is intended to reach are admittedly enormous. The acceptance of the principle of the Bill is tantamount to convicting of systematic dishonesty a class of people, who, if not for anything else, are distinguished for their simplicity and inoffensive character, and who have hitherto been considered by friends and foes alike, as the most devout of Hindus. Before one can make up his mind to subscribe to the principle of a Bill fraught with such consequences, it seems to me, one must be satisfied, and that beyond the shadow of a doubt, on two points: (1) that the evil, which this measure is intended to obviate, is of such a magnitude as to justify, what I cannot help regarding as, an extraordinary act of legislative interference, and (2) that there are no means now available for remedying the evil, or that such means as now exist are inadequate to cope with the gravity of the situation. After careful study of the speech of the learned member in introducing the Bill, as well as the several communications that have been addressed to this Council in support of the measure, I am not convinced that matters are so bad as they are represented to be, or that, unless the State be invested with the extraordinary powers which this Bill proposes to confer thereon, the cause of the religious and charitable trusts in the country is doomed beyond salvation. I do not think that the extent of mismanagement is so wide as to call for a measure of this character. This impression of mine, derived from a study of the papers available to the Council on the subject is, in my own case, personally, confirmed by the result of my twenty years' judicial experience

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in the sister State of Cochin, where the conditions are similar to those obtaining here. That there is some amount of mismanagement, and also misappropriation in the administration of the foundations contemplated in the scope of the Bill, I readily grant; no one who has had opportunities of getting some measure of insight into the way things are done, can deny that. Similarly, it will be conceded that the management of Sirkar Devaswoms is not absolutely beyond criticism, and if these latter Devaswoms and their affairs were as often before the Courts as institutions managed by private individuals or bodies were, I have no doubt that it would be found that dishonesty and fraud were evils which the power of the Sirkar and the sanctity of the place were not able to keep out altogether. It may be, that there is not a single Sirkar Devaswom so ill-managed as may be the case with the temporalities of the Thrivikramangalom Devaswom; but it certainly will not be impossible to mention Devasoms under management of Nambudry Ooralers where the religious side of the institution is attended to with a fervour and spirit, with a regularity and splendour, unknown in the best managed Sirkar Devasom. Both are exceptions, and neither can afford a just basis for legislative interference, one way or the other. Again, this is a measure fraught with serious consequences to a large body of persons, who, with all their failings, deserve well of the country and the people. These persons have been from time immemorial taught to look upon even the very gods enshrined in these institutions as not outside the pale of their proprietary rights. With regard to the effects which, in a sense, may be said to be dedicated to these gods, they look upon them as portions of their own Brahmaswoms, subject of course to an obligation to maintain the usual pujas and other ceremonies prescribed. This idea may appear to a lawyer of the present day, as altogether untenable; but, it occurs to me that it will be doing no great violence to one's own convictions, with regard to the sanctity of trusts in general, to refer the above impression, so prevalent and so widely recognized, to a legal origin. A measure such as this will stagger these good people, and I am not satisfied that a staggerer is the proper thing to be administered to them. My second objection to the Bill has reference to the means available to the agency, which is to be entrusted with the management of these institutions. Of course, the State, the Sovereign has a right to see that all public trusts are lawfully and faithfully administered. But like every other right, this one has a co-relative duty. How has this duty been hitherto discharged? An Ooralen may well ask the question, how it is that the State has not hitherto taken any notice of the deplorable state of affairs at Thrivikramangalom, which, I understand, is not a hundred miles away from the headquarters. Surely, it had the means to set matters right. Section 511 of the Civil Procedure Code (Regulation II of 1065) was it its disposal for so many years. One or the other of the following things is plain. If the evil whose existence is so vehemently pressed by the learned Mover did really exist, not alone at Thrivikramangalom but throughout the country, the State has not been sufficiently alive to its duties, as it is legitimately solicitous of its rights. How many suits has the Government instituted under the provisions of an already existing law? I am speaking under correction, but, I am told, not a single one. Or, it is manifest that the evil is not so crying as it is sought to make it out. I believe, that it was not because the State has been oblivious of its duties that there have been no such suits. On the contrary, I am satisfied that it has the interests of Devaswoms at heart, and that it has not hitherto failed in its duties towards such institutions. In fact, there is an impression abroad that, in its solicitude for Devaswoms, it has sometimes not shown to similar institutions belonging to other than Hindus, the consideration which they deemed they deserved. The true explanation for this apparent inactivity of the Sirkar lies, I think, in the conviction of the Sirkar that things are not so bad as the learned Mover of the Bill would have us believe. If they are so bad, let the Government enter upon a crusade, and no holier crusade can they lay their hands to than the protection and good management of the properties dedicated to religion. And if the Government find the existing means inadequate, it will be a legitimate request for them to make, to be armed with more powers, and I, for one, shall be the first to agree to their investment with such additional powers. Now, however, it is not clear to me that the extent of the evil is of such a magnitude as calls for the proposed enactment, nor am I satisfied that the means available to the Government are inadequate or have been exhausted. For these reasons, I am unable to subscribe to the affirmation of the principle of this measure, and I am constrained to vote against the motion now before the Council.

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Mr. Kochukrishna Marar.—The Bill, whose principle we are asked to affirm or dis-affirm today, is a measure of very vast importance. By its means power is sought to be given to Government to transfer to itself from private agencies the management of no less than 7,758 religious and charitable endowments possessing property roughly estimated to be worth 2 crores of rupees. The interests at stake, as the learned member in charge of the Bill has put it, to the State which seeks to assume management as well as to the persons who are to give it up are, indeed, enormous, and I shall not be surprised if there be found people, not oversc upulous as to what conclusions they draw from the premises before them, to throw out the dark suggestion that what has prompted Government to introduce the present Bill is not so much the desire to improve the existing condition of the religious and charitable institutions in Travancore as the extremely tempting prospect of making an appreciable addition to the State revenue. I know that such a suggestion is as mischievous as it is unfounded, and, if it ever comes to be made at all, we have only to accord it the treatment it deserves. It seems to me, all the same, that the disturbance that is likely to be caused in the economic condition of the country is a matter well worthy of our most serious consideration.

There are also other facts more or less important which we cannot afford to lose sight of, and prominent among them are the opinions submitted to this Council, since the publication of the Bill in Edavom last, by gentlemen who are in a position to know what they are speaking about and who are entitled to be heard with the greatest respect. Mr. Shungrasoobyer, the predecessor in office of our esteemed President, who has served this State for upwards of forty years in various capacities, is emphatic in his denunciation of the Bill. After discussing the question in all its numerous aspects, he has come to the deliberate conclusion 'that the Bill, as it stands, is objectionable in principle, that it is unnecessary, inexpedient and impolitic.' The objections raised by the learned Judges of the High Court are, to my mind, invincible. They have opposed the Bill, tooth and nail, in whole and in part, in principle and in detail. They do, indeed, admit that there is mis-management going on in several of the religious and charitable endowments in the country, and yet it is significant they do not suggest any remedy other than the extension of the scope of section 511 of the Civil Procedure Code on the lines indicated by them. The Valia Koil Thamburan, the premier nobleman in the State, who is second to none so far his right to speak with authority on the matter now before us is concerned, is, it may appear at the first blush, an out-and-out supporter of the measure: but it strikes me that the recommendation made by him in para 3 of his letter entirely alters the nature of his support. He wants private temples to be exempted from the operation of the Bill and suggests that what constitutes a private temple may be clearly defined. This suggestion, coming as it does after the observation that there will be some difficulty in distinguishing between temples dedicated to the public and temples intended for a particular family or families, and that, so far as his experience goes, there is no temple in the State which is not frequented by the public and in which offerings from the public are not coming almost daily, leaves in my mind the impression that in his—the Valia Koil Thampuran's—opinion the right of entry into a pagoda enjoyed by the public is, by no means, a sure test of its dedication to the public, that the 7,758 institutions referred to by the Mover as liable to be affected by the provisions of the Bill cannot all be brought under the category of public, religious, and charitable endowments, and that the measure of his support will depend upon the extent of the clear definition which, he thinks, should be embodied in the Bill.

The absence of legislation on the subject in British India is yet another circumstance which we have to take into consideration, and, though I mention it as the last, it is not, for that reason, the least in point of importance. The learned author of the Bill has adverted to it, to show that the existence of a corresponding British Indian enactment 'would not only have considerably lightened the labours of a member of this Council undertaking a similar measure here, but would have created in the minds of random critics a sense of respect and responsibility and thus obviated a deal of useless and reckless criticism.' I need hardly say that I sincerly sympathize with him; but it is a fact to be borne in mind that, in the present instance, ours is not the inestimable advantage of having only to walk in the footsteps of others wiser and more experienced than ourselves. Bearing in mind these

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facts, which serve as so many danger-signals warning us to be cautious, I now proceed to a consideration of the main principles of the Bill.

The learned Mover has laid it down as a proposition of law that in the management of public trusts, the Government under certain circumstances, has a right to interfere. I may say at once that with it I record my entire agreement. But I must at the same time beg leave to be permitted to observe that as a working hypothesis it is not only useless—it is even likely to turn out to be a delusion and a snare—unless we further determine what those institutions are which, as coming under the category of public trusts, are liable to be taken charge of by Government. That is one of the questions of importance we have to deal with in connection with the Bill and, as I hope to be able to show presently, we cannot be too cautious or circumspect in answering it.

Like several other things, the Ooralma temples found scattered all over the country, and which it is the special object of the present Bill to protect, are institutions peculiar to Malabar. They are, to all appearance, and especially so far as the customary right which the public have acquired to go and worship therein is concerned, analogous to what are regarded as public trusts elsewhere; and yet the prevailing opinion in regard to them seems to be that the original founders never made a dedication of them in favour of the public, and that it did not form part of their intention that the institutions themselves and the properties attached to them should, at any time, be regarded as anything other than their private property, subject to a trust. I should very much have liked to furnish you with information more acceptable by reason of its being substantiated by evidence not altogether lost to us, I believe, even now. I daresay there will be found among the records of temples of some importance *grandhavaries* and other documents containing, if not direct evidence as to their origin, at least materials which will help us in coming to a reasonable conclusion in regard to it. But the Namboori Brahmins, who form 95 per cent of the Ooralers, and who are therefore the custodians of the documents relating to their Devaswoms are, by instinct as well as tradition, a class of people so slow to move that it is well-nigh hopeless to get them to produce anything, at all events, in time. I know of several respectable gentlemen of that community, all excellent men in their own way, but only innocent of the busy whirling world and its ways, who have come and asked me, long after the Jenmi and Kudian Regulation became law, whether they could not get it altered by appealing to the Madras Government or, if need be, to the Houses of Parliament in Great Britain. In the same manner, I am not sure they will not come forward, it may be years hence, after all the Devaswoms have beeen assumed by the Sirkar, and represent to some people, no matter who, that the Religious Endowment Regulation is a piece of great hardship and injustice to them in that it has been the means of depriving them of properties which, though set apart for their Devaswoms, had, nevertheless, been theirs, and upon which they had been depending for their very subsistence. Seeing that the Bill has been before the public for very nearly 8 months, I may not, perhaps, ask you to wait any longer, to enable our slow-moving brethren to come up with us; but in view of the grave apprehensions widely entertained by the people most concerned, that this Bill is a covert attack upon their long standing vested rights, as well as of the obligation we are under to make good our declaration that we are not going to invest Government with any jurisdiction not already vested in it by law, I venture to suggest that the very first duty we have to do, in connection with the Bill, is to appoint a Commission for the purpose of drawing up a schedule of the endowments which may fairly be brought under the head of what are designated public trusts. The attempt made in the Bill to classify the seven thousand and odd endowments with reference to their character as public or private Trusts is, I beg leave to observe, another reason which has induced me to make the suggestion. We find this somewhat ambitious work performed in sections 2 and 3. The proviso to the former defines private temples to be such as are solely intended for the use of the founder or members of his family, and public temples, those for which the Bill is intended, are, according to the latter, temples that are dedicated to or used of right by the public.

Now, it strikes me that the above classification by means of definitions is open to what I may call a preliminary objection. Whatever it may be in other countries, in Travancore where it is difficult to find a religious institution which is not claimed as

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the private property of some person or body of persons, the question whether a particular pagoda is one in respect of which there has or has not been a dedication in favor of the public is always and pre-eminently a question of fact, which it is not possible to decide without the help of evidence bearing upon it, and yet it is not even so much as pretended that sections 2 and 3, which profess to shed light upon the origin and constitution of not one or two but thousands of institutions, old as well as new, but most of them very old, represent the result of any investigation. It may, however, be urged that there is a distinctive feature common to all the temples which have been declared public, and that is, the fact of their being open to the public. Yes, they are open to the public for purposes of worship, and to do that one thing, the public may have acquired a customary right; but I ask, is it always a necessary or even legitimate inference to draw therefrom that the original foundation must have partaken of the nature of a public trust? I, for my part, am unable to concede that it is either, firstly, because it does not harmonize with what we know of temples which are admittedly private and which are of comparatively recent origin, and, secondly, because there is nothing inconsistent in the converse supposition, it being a sin according to the Hindu ideas to keep out people even from a private shrine. In fact, the sanctity of a place of worship and the number of people drawn to it are supposed to act and re-act upon each other. Just as the number of worshippers having recourse to a pagoda is considered to be a test of the sacredness of the pagoda, it is the popular belief that the sacredness of the pagoda is enhanced in proportion to the number of people going there for worship. Then, again, it appears to me that the definitions are wanting in clearness, and that they do not take us to any distance from where we started. What does the term 'solely intended for the use of the founder or members of his family,' occuring in the proviso to section 2 mean? If it denotes temples or shrines to which the public have no access, then, I hope, there will not be found people wanting to bear me out when I say that there are no such temples in Travancore. If, on the other hand, the expression has reference only to such places of worship in regard to which the public do enjoy the privilege of entering, but not as a matter of right, the places of worship themselves not having been primarily intended for them or dedicated in their favour, then, what those institutions are and how they are to be distinguished from temples declared to be public under section 3, are, again, questions which have to be determined upon evidence taken.

To proceed with the work of legislation with such a classification for our basis is, to my mind, about as prudent as taking a leap in the dark, and I would, therefore, once more suggest that what we have now to do is to appoint a Commission to carefully prepare a list of the endowments which are really public, allowing the Bill to lie over in the meantime. If, however, there is no time to be lost, and we must push on as best we can with the materials now in our possession or what, individually, we may happen to know about the subject, I must urge for the exemption of at least the Ooralma temples from the operation of the law.

As regards these last-mentioned temples, I have already told you that the general impression of the people is that they are the private property of the Ooralers who are in charge of them. They are not, of course, private in the sense that they are just like other properties belonging to their Illom or Tarwad, and not set apart for a Deity or for any particular purpose. All that is meant is, that the proceeds arising out of the property are subject to a trust, and that, if after meeting all the charges incidental to the trust there is any balance left, the same comes back to the donor or his representatives as resulting trust. In support of this contention, I will here quote two passages which, I am sure, will commend themselves to you. "The current orthodox conception in Keralam, including Travancore, is that most of the Ooralma temples of the sort left untouched by the Sirkar in 993 are the property of the Ooralers, though devoted for public worship, or, at least, they have substantial proprietary rights in the endowments of those institutions, and these orthodox popular ideas, erroneous they may be, have been strengthened by the action of the British authorities in Malabar, and of the Travancore authorities since the year 993 M. E." There are the words of the Judges of the High Court, and here is what Mr. Shungrasoobyer, the ex-Dewan has to say: "Speaking of the religious institutions managed by the Ooralers, they are known to be of ancient origin and of private foundation. The succession in their management has been perpetual by inheritance. In fact, it is exactly on the same footing as succession to family property.....The hereditary

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successors have been acting as proprietors to all intents and purposes and have been so regarded by the public who have had no voice as *cestui qui trust*. This state of things has been going on for ages."

The above testimony, which has a value all its own, is corroborated by circumstances no less valuable, and the most important of them is the manner in which the properties attached to the various institutions are now enjoyed. It is a matter well-known to us all that, in by far the large majority of instances, the Ooralers of Devaswoms make practically no difference between their private property and property set apart for the use of the pagoda of which they are the Ooralers, the only obligation they feel called upon to discharge being, that out of the proceeds of the property of the latter description, they should carry out the object of the endowment. Here, I do, indeed, expect to be told, if that has not already been done by the learned Mover as well as by the several gentlemen who have sent replies to his interrogatories, that such enjoyment of the property is not a proper application of the trust fund and that it is with a view to put a stop to such mal-practices that the present Bill has been introduced. What I have to say in reply is simple, and it is this. The Namboori Brahmins who, as I have already said, form 95 per cent of the Ooralers, whatever their other faults may be, are not open to the charge of being irreligious. If they have not been able to keep abreast with the rest of the world in the general march onwards, it is, from their point of view, a source of infinite satisfaction that they have not been drawn towards the present day materialism—in their opinion, a species of impudence—which does not shrink even from questioning the existence of the Almighty. There is no denying the fact that as a class they are pious and god-fearing, and, if a certain act of theirs, knowingly done, is innocent or sacrilegious according as we view it from one stand-point or another, I would certainly view it from that stand-point which would make it innocent and not sacrilegious. I would rather trace their enjoyment of trust properties to a vaild right vested in them than characterize it as 'wholesale mis-appropriation.' We are led to draw the same inference from the fact of the temples in Malabar, to all intents and purposes the same as those in Travancore, being exempted from the operation of Regulation VII of 1817, a Regulation which was passed, as we gather from the somewhat elaborate preamble, with the special object of putting a stop to the produce of religious and charitable endowments being 'appropriated, contrary to the intentions of the donors, to the personal use of the individuals in immediate charge of them'. The wording of the preamble is general and is sufficiently comprehensive to include all endowments which are public. Why were the temples in Malabar, which are numerous as well as rich, regarded as lying outside the pale of the Regulation? The learned Judges of our High Court say, that it was because of the substantial proprietary interest which the Rajahs and Jenmis of Malabar were supposed to have in the endowments, and they are corroborated, if corroboration there need be, by the very passage quoted by the learned Mover from the Report of Sir. T. Muthuswami Iyer's Committee, and which forms the basis of section 2.

Coming next to the second of the two main questions which the learned Mover has discussed and answered in his speech asking for leave to introduce the Bill, I grant there are several things connected with the present administration of religious and charitable endowments which require mending. It is affectation to deny that there is mismanagement going on; but whether it has reached such an acute stage as would justify us in diagnosing it as 'wholesale mis-appropriation and shameful mismanagement' as the learned Mover has chosen to characterize it, and then applying to it the drastic remedy proposed by the Bill, is a matter which admits of considerable divergence of opinion. I have already told you what I think of the Brahmin Ooralers who are in charge of the majority of the religious endowments. With your permission, I will now quote the opinion of one to whose testimony, I am sure, you will attach very great weight. Speaking of the Brahmin Jenmies, Mr. Shungrasoobyer says that, "as a class, they are well-behaved, god-fearing and simple minded. They are faithful to their family traditions and behests. It is a point of honor with them to maintain the pagodas under their charge in as good a condition as circumstances would permit, and, nothing they regard so portentous and fatal to their salvation as the discontinuance of the poojas and connected ceremonies, or misuse of the endowments. They are known to strain themselves to the utmost in spite of

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all odds.' To accuse such a body of people of systematic, or, to use the learned Mover's own words, 'wholesale misappropriation and shameful mis-management' is opposed to philosophy and to fact, and, I venture to submit, that is to some extent proved by the paucity of specific instances by means of which the learned Mover has attempted to substantiate his sweeping charge. Besides the fifty-one temples and charities owning much wealth, and which, in a general way, were said to be precipitating into irreparable ruin, you will recollect that we have been favored with but one solitary instance of a temple, once rich, having been reduced to a condition of comparative poverty owing to the misconduct of Kariastans, I mean the Thrivikramangalam Devaswom, 'the lovely shrine on the banks of the Karamanai river.' Now, fifty-two out of a total of over one thousand Ooralma temples is a very small number, and to infer from the mis-management which is found to exist in respect of them that the remaining ones are also in the same unenviable predicament is, to my mind, a dangerous process. Evidence almost conclusively disproving misconduct on the part of Oorelers is furnished to us by the gentlemen, whose opinions we have invited, when they say that in the case of institutions managed by single Ooralars, there is hardy any mis-management worth the name. That, I take it, is a very significant circumstance. If propensity to pilfering is one of the besetting sins of persons who are in charge of religious and charitable endowments, naturally speaking, we should expect to find it in a state of full development in those sole managers who, as having no one to check or control them, are masters of the situation, and yet, curiously enough, they are the very persons who are, by the almost unanimous verdict of competent authorities, declared not guilty. What, then, is the extent of the mis-management which is admitted to exist, and what is it due to? These are questions which can be satisfactorily answered only after a careful investigation directed to that end, and I would willingly leave them to extend the scope of the Commission which I have recommended to be appointed. In the absence of evidence, however, I cannot do better than accept the opinion of the learned Judges of the High Court who have expressed themselves in these words: "The impression we have formed in the course of our judicial experience is that mismanagement prevails, to some extent, in the case of several Devaswoms in which the trusteeship is vested in more than one joint family or house or in which the trustees are appointed by election. The causes of such mis-management and the consequent deterioration of the endowments are not attributable solely to the individual conduct of trustees. The primitive schemes of management afford ample and ready scope for dissentions and factions among the Board of trustees or electoral bodies. The Samudayom in whom, under the old scheme, vested the management of Ooralma Devasoms subject to the control of a body of two or more Ooralers, is, under the present law, debarred from suing refractory tenants without joining the Ooralers, some of whom, it often happens, are gained over by the tenants and do not co-operate with their colleagues. The result is a stand-still, and the consequent difficulty in realizing the rents and profits of the institution punctually, contributes towards deterioration'. We thus find that the mis-management is neither solely due to misconduct on the part of the persons in management, nor is it of such appalling magnitude as it was represented to be by the learned Mover. Is it, then, I ask, expedient or in keeping with the dictates of sound policy to set the legislative machinery of the State in motion to remove it? The disturbance in the economic condition of the country which is sure to follow as the inevitable out-come of the proposed enactment, and the heart-burnings that will be caused to thousands of people in consequence, ought, under the circumstances, I think, to make us answer the question in the negative.

The last question we have to consider has reference to the sufficiency of the proposed remedy. Is assumption by Government of the various endowments a guarantee that the mismanagement, which is alleged to be threatening their very existence, will be rendered a thing of the past, that the properties attached to them will be conserved, and the intentions of the original donors carried out? Is it to prove the turning-point in their history, calculated to mark the commencement of an era of uninterrupted prosperity? In considering these questions, I must confess I feel considerably handicapped. The learned Mover has told us, in terms which it is not easy to mis-understand, that the Devaswoms under the management of the Sirkar are decidedly better off than those in charge of private agencies, and to assert the

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contrary or even to entertain a doubt on the point argues 'fashionable ignorance on the part of the person making the assertion or entertaining the doubt. To appear before the public as a member of the fashionably ignorant class is, even in this age of fashion, of course, not what people will ordinarily be found willing to agree to; but as a member of this Council bound to give free expression to my views, I cannot help assuming the disagreeable rôle. As a result of the best endeavours I have made to get at the truth of the matter now engaging our attention, I am unable to say more than that just as there are Sirkar-managed pagodas which are better off than those managed by private agencies, there are several Devasoms of the latter description, where the intentions of the donors are so faithfully carried out, that the Government may well take them as models for imitation.

This, then, is the position in which we find ourselves. We are on firm ground so far as the right of Government to interfere in the management of public trusts is concerned. But what the particular institutions are in respect of which the right is to be exercised, whether there is a justifying necessity for the exercise of such right, and lastly, assuming the existence of the necessity, whether assumption by Government will produce all or any of the benefits which are expected to result from it, are questions in regard to which, we are in a world-wide sea. Legislation, in these circumstances, is, in the words of Sir Fitz James Stephen, 'Speculative Legislation,' and I cannot find my way to give my vote in favor of it.

Mr. Nagam Aiya.—I beg to say a few words by way of reply. Because I said that there is mismanagement in some temples, it does not at all mean that I consider the whole Namboori Brahmins as guilty. Judging from the remarks of some of my learned friends here, it would look as if I were a great enemy of the Ooraler junmies of Travancore. On the contrary, I am the first to subscribe to the dictum of Mr Shungrasoobyer that the Brahmin trustees are a well-meaning, pious and religious class of people, and if you wanted further evidence of my admiration for the Nambooris, their simplicity, good nature and religiousness, I refer you to my published official writings, which will bear ample testimony.

In my former speeches, I have made it clear that the Bill is not intended for fiscal purposes, nor does Government desire to assume any temples, and yet some of my learned friends here seemed to think that Government wants to assume temples and that the existence of 7,000 and odd non-Sirkar temples is a great temptation. I will repeat that such is not the intention of Government, nor does the wording of the Bill justify such statements. The law requires the utmost prudence from Trustees; so, it is really no argument that a trustee was good-natured or pious or well-intentioned. It is not enough if a trustee bestows the same care and solicitude upon trust-funds as he may be disposed, or it is his wont, to bestow upon his own. The duty of a trustee, says Lindley, is not to take such care only as an ordinary prudent man would take, if he had only himself to consider; the duty rather is to take such care as he would take, if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide. Public trustees, like private trustees, must act with the utmost prudence. As rich men, they may be a little negligent in their own affairs, but they must in no way endanger the trust-estate or run any unnecessary or unusual risk.

Then, there is the gratuitous assumption made by some of my friends that all temples in Travancore are private. I have only to say that that is not the case. The present condition of things demands Government interference, and I do not ask for more than what the condition of things would require or would justify.

When it was said that out of 7,000 temples, I referred only to 52 temples of importance which are known to be mismanaged, it was not meant that no more than 52 temples were mismanaged. Why, for the matter of that, I gave an instance of only one temple in my last speech, viz., the Trivikramangalam Devaswom. But I said that 52 of these temples, owning several lacs of rupees' worth of property are known to be ill-managed. It does not appear from the criticisms what notice Government should take of these 52 important temples. Are they to be utterly neglected? Would that be a righteous policy or a proper one? But supposing one of these temples owns for itself 5 lacs of rupees' property, and there is mis-management and mis-appropriation going on, what do you say should be done?

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One of my friends here, quotes the High Court opinion on the general impression on the part of the public that the non-assumed temples were meant to be altogether free from Government interference in the future. That, I beg to submit, is the only non-judicial statement in the High Court memo.

I read to the Council from one of the petitions addressed that a temple which owned 2,000 parahs of land and 160 gardens had already lost three-fourths of that property. This is only one case and surely it is a great loss; yet if, as some of my friends say, till all the properties of all the remaining Devaswoms are lost, there need be no legislation, it is a dismal prospect indeed!

In conclusion, I have only to say that I am satisfied that the arguments which have been put forward here, may be arguments against particular sections, which, though open to modification or improvement, cannot affect the principle of the Bill itself. In fact, as the Council is aware, no Bill brought before this Council has ever passed into a Regulation without some modification, often times, I myself admit, a good many modifications, when it passes through the Select Committee.

President.—Gentlemen, After the eloquent and interesting speeches we have had the pleasure of listening to to-day, I feel it to be my duty to make a few remarks on this occasion. As observed by my friend, Mr. Thanu Pillai, section 5 really embodies the principle of the Bill. There seems to be a strong impression that the Bill re-introduces the policy of Col. Munro, who transferred *permanently* to Government management, a large number of Ooralma pagodas. I wonder how, in the face of section 9 and other provisions of the Bill, this impression gained ground. In asking my friend, Mr. Nagamaiya, to undertake this legislation, my main object was to provide legal means for the discharge of the duties which had devolved upon the Government, in connection with certain Ooralma temples, not now wholly under Sirkar management. In 50 temples of this class, the Government has to appoint a Koima or Melkoima. There are also Ooralma temples in which Government have become co-trustees, under the operation of the law of escheat. Their number has to be ascertained. One of them is at Perumbavoor. In these temples, the Government hold a very peculiar position. While they have no full power of management, they are blamed for all shortcomings therein. It is, I believe, no violent presumption that the Sirkar accepted Koima Sthanom in these temples at the request of the founders, who must have felt convinced that Government control over the actions of trustees would be beneficial, in the lasting interests of the institutions. On the complaint made by the Koima of the Thoravur Devaswom, appointed under a Neet issued by His Highness the Maha Rajah in accordance with immemorial usage, and also by some of the Ooralers, of mismanagement and misappropriation of Pagoda funds, four Peishcars (Messrs Rajaram Row, Raghunatha Row, Padmanabha Iyer and Retnaswamy Iyer) had, from time to time, to enquire into the state of affairs, and every one of them found the complaint well substantiated. The matter was under correspondence *for fourteen years*. The Ooralers refused to show to the Koima the accounts or leases, or to recognize him in any way, and even declined to pay his salary. Such a conduct, coupled with proved mismanagement on the part of the Ooralers, led to the assumption of the Devaswom by Government. The time when the mere prestige of Government was sufficienct for the smooth management of such concerns, has gone. With the school master and lawyer abroad, even a Government must be ready to show some provision in the Statute Law for any action it takes. The realization of rents &c., due to these institutions, is the first step towards management. The absence of legal provision to collect them, in a summary way, has made it necessary for the Government to pay the charges of management out of the general revenues of the State, in the hope (not often *fully* realized) that they may be recouped when the collections are made in due course of law. In the Perumbavur Devaswom, no collection of rent was possible, owing to the other trustees not joining the Government, but the priest obtained a decree against Government for the salaries &c., due to him and he was paid out of the State revenues. My object in troubling you with these uninteresting details is to show you that, so far as the institutions falling under clauses (*c*) and (*d*) of section 5 of the Bill are concerned, there is *absolute necessity* for legislation, to enable Government to carry on their duties, incidental to the Koima Sthanom thrust on them by the original founders and to the law of escheat. We have, then, cases like

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the Kaviyoor temple, in which, the Ooralers wish to make over the management to Government either temporarily or permanently. Here, no question of interference with private rights arises. If the Government complies with the request, it is more to relieve the Ooralers of a burden than to benefit themselves. Even in the case of assumption at the request of the Ooralers, the difficulties of collecting rents and the consequent disadvantages, already referred to, are not absent.

The only class of cases which is really debatable is the one covered by clause (*a*) of section 5, and it is about them that all my friends spoke at great length. I have yet to hear what objections there could be to legislate about the 3 other classes of cases. As to clause (*a*) of section 5, I have to observe that it is based on the decision of the Royal Court of Final Appeal, referred to by Mr. Nagam Aiya in his introductory speech. I do not think that the authority of that decision is affected by section 511 of the Civil Procedure Code. The local High Court had no case in which they had to decide *judicially* the effect of this section upon the decision of the Royal Court. The decision is based upon *the prerogative of the Sovereign* to assume mismanaged institutions, while the section of the Procedure Code empowers *the Dewan, interalia*, to grant permission to parties interested to obtain redress through Civil Courts. The main object of the section is, I believe, to minimise frivolous, malicious and vexatious suits against trustees, at the instance of private parties, by the intervention of the Dewan, who is legally required to sanction the institution of the suit after satisfying himself that a real necessity exists for legal action. I think that the operation of this section should not be restricted as proposed in the Bill; for, Government may very often decline to interfere on the complaint of parties but may have no objection to permit them to seek remedy in Courts. The right of the parties affected by the actions of Government, and public servants under the proposed law to obtain redress by a resort to Civil Courts should also, I think, be *preserved*. With these modifications, I really see no danger to any body's interests in any class of cases

The necessity for legislation to empower Government to recover summarily rents due to institutions, whose management they may find it necessary to assume, in the discharge of the duty which the usage or common law of the country has thrown upon them, and to manage them *without indenting upon the general revenues of the State for help*, is clear. I do not now wish to trouble you with my views on the provisions of the Bill which, if the principle be affirmed, would go before a strong Select Committee, who will undoubtedly eliminate from it all that may appear to operate harshly against parties interested, and introduce safe-guards for the proper working of the law in the best interests of the religious institutions, which I wish to see maintained according to the pious intentions of the original founders. In deference to the strongly expressed views of my friends here present, and in consideration of the various difficulties which attend specific and definite legislation as regards cases covered by clause (*a*) of section 5 of the Bill, I would suggest to Mr. Nagam Aiya, the expediency of confining the Bill to cases covered by clauses (*b*), (*c*) and (*d*) of section 5, and to the other members, of affirming the principle of the Bill as regards the latter.

Mr. Nagam Aiya.—I agree to withdraw clause (*a*) of section 5, especially after the remarks which fell from our learned President, and the clear exposition he has favoured us with, of the effect of the case-law and section 511 of the Civil Procedure Code.

In the light of the observations made by the President and the announcement from the Mover, that he was prepared to withdraw clause (*a*) of section 5 of the Bill, a discussion followed as to the principle of the Bill in respect of institutions falling under clauses (*b*), (*c*) and (*d*), namely, those voluntarily surrendered by the trustees, those in which the Sirkar has the right of Koima or Mel-koima and those that lapse to Government under the operation of the law of escheat; and it was resolved that the Bill as thus limited in scope be referred to a Select Committee with full power to modify it in any manner the Committee may deem necessary.

The principle of the Bill as thus modified having been affirmed by the Council, Mr. Nagam Aiya proposed that the Bill be referred to a Select Committee consisting of Messrs. Kunhiraman Nair, Thanu Pillai, Sivasubramonia Pillai and the Mover, to report within six months.

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Seconded by Mr. Prince.

Carried.

CIVIL COURTS REGULATION AMENDMENT BILL.

Mr. Thanu Pillai—At the last meeting, I obtained the leave of the Council to formally introduce the Bill, reserving for this meeting the discussion of its principle.

The object of the proposed measure is to afford relief to the Courts, which, under existing arrangements, are not able to keep pace with the advancing civil litigation. The volume of litigation has been increasing from year to year. In 1070, the total file of the Courts amounted to 30,019 suits which rose to 33,926 in 1071, 36,033 in 1072, and 43,186 in 1073. This was probably the high-water mark of civil litigation. In 1074, the file was 41,148 and in 1075, 39,602. There was of course a special cause—the operation of the Jenmi and Kudyan Regulation—which tended to swell the file in 1073 and 1074. But even if we exclude these years, the statistics above quoted show that the normal litigation of the State has advanced about 30 per cent during the last 6 years.

In 1897, the High Court drew the attention of Government to the state of litigation and suggested the raising of the small cause jurisdiction of the Munsiffs as the best means of affording relief to the Courts. But Government, while admitting that the figures furnished by the High Court established the necessity for giving the Courts some relief, thought that the rise in litigation might be temporary, and decided, therefore, to entertain an itinerant Munsiff, in addition to the one already appointed. This experiment has been given a fair trial, the number of itinerant Munsiffs having been increased to 3 in 1075. In the opinion of the High Court, the results have not been satisfactory; and they have again moved for a reconsideration of their proposal.

The recommendation made by the High Court is to raise the ordinary and small cause jurisdiction of all Munsiffs to 1000 and 50 Rs. respectively, and to invest the District Courts with original small cause jurisdiction in all suits for money or personal property ranging between 50 and 100 Rs. in value. Considering the powers exercised by similar classes of Courts in British India, the above proposals are certainly moderate; but, having regard to local conditions, it has been thought desirable to defer, for the present, the proposal to invest the District Courts with original small cause powers, and merely to increase their final appellate powers. This is a country of peasant proprietors, and an amount ranging from 50 to 100 Rs. would, in by no means a small proportion of cases, represent the aggregate wealth of families. The Council is, of course, aware that, in documents relating to movable and immovable properties, the consideration is very often described in chuckrams. Of the total number of documents registered in 1074, 37·6 per cent were below 50 Rs. in value, and 23·2 per cent were between 50 and 100 Rs. In other words, over 60 per cent of transactions in this country are concerning amounts not exceeding 100 Rs. The distance which poor ryots will have to travel, to seek relief from District Courts, if the latter are invested with original small cause jurisdiction, to the exclusion, in respect of such class of suits, of the jurisdiction of the local Munsiffs' Courts, and the inconvenience and expense to which they will be put, will be prohibitive. For these reasons, it has been decided to confine the present measure to enhancing the original jurisdiction of Munsiffs and the final appellate jurisdiction of District Courts.

It will be observed that the enhanced small cause and ordinary jurisdiction is not conferred by the Bill on all Munsiffs; but power is taken to invest particular Munsiffs with such powers. The real object of the measure is, as already observed, to afford relief to the Courts. An examination of the judicial statistics will show that, under existing jurisdictional arrangements, the devolution of work on the several Courts is unequal. Taking the figures for the Munsiffs' Courts for 1075, it is observed that, in one court the file (including ordinary and small causes) exceeded 3,000 suits, in 11 courts it exceeded 2,000 suits, in 5 courts it exceeded 1,500 suits, and in 2 courts it was below 1,000 suits. The file of the District Courts ranged from 428 to 113. Relief, therefore, is not required for all Courts. Again, it will

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